



DEPARTMENT OF COMMERCE

International Trade Administration

A-570-904

Certain Activated Carbon from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On December 17, 2019, the Court of International Trade (the Court) issued a final judgment in *Jacobi Carbons AB v. United States*, Consol. Court No. 15-00286; Slip Op. 19-159 (CIT December 17, 2019) (*Jacobi AR7 IV*), sustaining the Department of Commerce's (Commerce's) third remand results pertaining to the seventh administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (China) covering the period of April 1, 2013 through March 31, 2014. Commerce is notifying the public that the final judgment in this case is not in harmony with the final results of the administrative review, and that Commerce is amending the final results with respect to certain producers and/or exporters identified herein.

DATES: Applicable December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Palmer, AD/CVD Operations Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-9068.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2015, Commerce issued the *AR7 Final Results*.¹ Jacobi Carbons AB (Jacobi), a mandatory respondent, and Jacobi Carbons, Inc., its affiliated U.S. importer of subject merchandise,² challenged certain aspects of the *AR7 Final Results*. Jacobi challenged Commerce's final results regarding: (1) the selection of Thailand as the primary surrogate country for the mandatory respondents,³ (2) the selection of Thai surrogate values (SV) used to value financial ratios and carbonized material, and (3) the reduction of Jacobi's constructed export price (CEP) by an amount for irrecoverable value added tax (VAT). On April 7, 2017, the Court in *Jacobi AR7 I* remanded Commerce's *AR7 Final Results* with respect to Commerce's surrogate country selection (specifically, its determinations regarding economic comparability generally and significant production of comparable merchandise by Thailand in particular). The Court also sustained Commerce's authority to deduct irrecoverable VAT from CEP, while ruling that Commerce's calculation methodology lacked substantial evidence and remanding to Commerce on that issue. The Court deferred resolving Jacobi's arguments regarding Thai SVs pending the results of Commerce's remand redetermination.⁴

Jacobi AR7 I ordered Commerce: (1) to provide a reasoned explanation as to why the

¹ See *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015) (*AR7 Final Results*) and accompanying Issues and Decisions Memorandum (IDM).

² In the third administrative review of the *Order*, Commerce found that Jacobi, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) are a single entity and, because there were no changes to the facts which supported that decision since that determination was made, we continued to find these companies part of a single entity for this administrative review. See *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 76 FR 67142 (October 31, 2011) (*AR3 Final Results*); *Certain Activated Carbon from the People's Republic of China: 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012) (*AR4 Final Results*); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) (*AR5 Final Results*); and *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) (*AR6 Final Results*).

³ The mandatory respondents are Jacobi and Datong Juqiang Activated Carbon Co., Ltd. (Juqiang).

⁴ See *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159 (CIT 2017) (*Jacobi AR7 I*).

range of gross national income (GNI) reflected on the Surrogate Country Memorandum⁵ demonstrates economic comparability to China, including why the Philippines's GNI did not, (2) reconsider and further explain Commerce's determination that Thailand is a significant producer of activated carbon, including the significance of Thailand's ranking as the sixth largest exporter in terms of its effect on global trade, and (3) further explain and reconsider Commerce's VAT calculation with respect to Jacobi in the *AR6 Final Results*.

On August 10, 2017, Commerce filed Remand I with the Court.⁶ Commerce addressed and clarified these issues without making any changes to the margin calculations for Jacobi.⁷

On April 19, 2018, the Court in *Jacobi AR7 II* sustained Commerce's economic comparability determination but again remanded Commerce's determination that Thailand is a significant producer of comparable merchandise and its determination on the irrecoverable VAT adjustment, as well as its SV selections for financial ratios and carbonized material.⁸ Although the Court in *Jacobi AR7 II* held that Commerce "provided a reasoned explanation of how it generated the surrogate country list, including why it considers those countries on the list to be at the same level of economic development" as China, which is supported by substantial evidence,⁹ the Court ultimately found that the current record did not support Commerce's significant producer determination on the basis of net exports. As a result, the Court remanded the matter and ordered Commerce to further explain or reconsider its significant producer determination.¹⁰ The Court also remanded the irrecoverable VAT adjustment for Commerce to address whether it is using gross or net prices to calculate the adjustment, and requested Commerce address and clarify the issues arising from the selection of the Carbokarn 2011 financial statements for the

⁵ See Memorandum, "Certain Activated Carbon from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated July 25, 2014 (Surrogate Country Memorandum).

⁶ See *Jacobi Carbons AB et al. v. United States*, Consol. Court No. 15-00286, Slip Op. 17-39, Final Results of Redetermination Pursuant to Court Remand, dated August 7, 2017 (Remand I).

⁷ See Remand I at 1-2, 42.

⁸ See *Jacobi Carbons AB. v. United States*, 313 F. Supp. 3d 1308 (CIT 2018) (*Jacobi AR7 II*).

⁹ *Id.* at 11.

¹⁰ *Id.* at 14.

calculation of financial ratios and address the carbonized material SV.¹¹

On October 24, 2018, Commerce filed Remand II with the Court.¹² Commerce affirmed its determination that Thailand is a significant producer of comparable merchandise and its selection of Thai import data as the SV for carbonized material.¹³ Commerce selected a different Thai source to value financial ratios and reconsidered the basis for its VAT adjustment while continuing to adjust Jacobi's CEP for VAT.¹⁴ As a result, Commerce revised its surrogate financial ratios and revised the VAT calculation formula using only entered value.

Consequently, Jacobi's final margin was revised to \$1.76/kg. The separate rate was revised to \$1.76/kg for: (1) Beijing Pacific Activated Carbon Products Co., Ltd. (Beijing Pacific); (2) Carbon Activated Tianjin Co., Ltd. (CA Tianjin); (3) Datong Municipal Yunguang Activated Carbon Co., Ltd. (Yunguang); (4) Jilin Bright Future Chemicals Co., Ltd. (Jilin Bright); (5) Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (Cherishmet); (6) Ningxia Huahui Activated Carbon Co., Ltd. (Huahui); (7) Ningxia Mineral and Chemical Ltd. (Ningxia Mineral); (8) Shanxi DMD Corp. (Shanxi DMD); (9) Shanxi Industry Technology Trading Co., Ltd. (Shanxi Technology); (10) Shanxi Sincere Industrial Co., Ltd. (Sincere); (11) Tancarb Activated Carbon Co., Ltd. (Tancarb); and (12) Tianjin Maijin Industries Co., Ltd. (Maijin). Commerce used the same methodology for calculating the separate rate that was used in the *AR7 Final Results*.¹⁵

On March 4, 2019, the Court in *Jacobi AR7 III* sustained Commerce's VAT adjustment but again remanded Commerce's determination that Thailand is a significant producer of comparable merchandise and directed Commerce to reconsider its selection of a primary surrogate country, and remanded Commerce's SV selection for carbonized material and financial

¹¹ *Id.* at 14-23.

¹² *See Jacobi Carbons AB et al. v. United States*, Consol. Court No. 15-00286, Slip Op. 18-46, Final Results of Redetermination Pursuant to Court Remand, dated October 23, 2018 (Remand II).

¹³ *Id.* at 3-8, 15-20.

¹⁴ *Id.* at 9-15, 20-32.

¹⁵ *See Remand II* at 54.

ratios on the basis that they were from Thailand.¹⁶ The Court in *Jacobi AR7 III* held that Commerce's determination that Thailand is a significant producer of activated carbon was not sufficiently supported by substantial evidence, and further held that the record does not support the selection of Thailand as a surrogate country.¹⁷

On October 24, 2018, Commerce filed Remand III with the Court.¹⁸ Commerce selected, under protest, Indonesia as the primary surrogate country and revisited the selected SV for carbonized materials, while calculating the financial ratios using the viable Philippine financial statements on the record, in addition to selecting new SVs for other relevant factors of production.¹⁹ As a result, Commerce revised its SV for financial ratios and carbonized materials.²⁰ Consequently, Jacobi's final margin was revised to \$0.12/kg.²¹ The separate rate was revised to \$0.12/kg for: (1) Beijing Pacific; (2) CA Tianjin; (3) Yunguang; (4) Jilin Bright; (5) Cherishmet; (6) Huahui; (7) Ningxia Mineral; (8) Shanxi DMD; (9) Shanxi Technology; (10) Sincere; (11) Tancarb; and (12) Maijin.²² Commerce used the same methodology for calculating the separate rate that was used in *AR7 Final Results* and Remand II, discussed above. On December 17, 2019, the Court sustained Remand III in *Jacobi AR7 IV*.²³

Timken Notice

In its decision in *Timken*,²⁴ as clarified by *Diamond Sawblades*,²⁵ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive"

¹⁶ See *Jacobi Carbons AB v. United States*, 365 F. Supp. 3d 1323 (CIT 2019) (*Jacobi AR7 III*).

¹⁷ *Id.* at 12-17.

¹⁸ See *Jacobi Carbons AB et al. v. United States*, Consol. Court No. 15-00286, Slip Op. 19-27, Final Results of Redetermination Pursuant to Court Remand, dated June 17, 2019 (Remand III).

¹⁹ *Id.* at 5-12.

²⁰ *Id.*

²¹ See Remand III at 25.

²² *Id.* at 26.

²³ See *Jacobi AR7 IV*, Consol. Court No. 15-00286, Slip Op. 19-159 (CIT 2019).

²⁴ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

²⁵ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

court decision. The Court's December 17, 2019, judgment sustaining Remand III in *Jacobi AR7 IV* constitutes a final decision of the Court that is not in harmony with Commerce's *AR7 Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise at issue pending expiration of the period to appeal or, if appealed, a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce amends the *AR7 Final Results* with respect to the companies identified below. Based on Remand III, as sustained by the Court in *Jacobi AR7 IV*, the revised weighted-average dumping margins for the companies listed below during the period April 1, 2013 through March 31, 2014, are as follows:

Exporter	Margin (Dollars Per Kilogram) ²⁶
Jacobi Carbons AB	0.12
Beijing Pacific Activated Carbon Products Co., Ltd.	0.12
Carbon Activated Tianjin Co., Ltd.	0.12
Datong Municipal Yunguang Activated Carbon Co., Ltd.	0.12
Jilin Bright Future Chemicals Company, Ltd.	0.12
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.	0.12
Ningxia Huahui Activated Carbon Co., Ltd.	0.12
Ningxia Mineral and Chemical Limited	0.12
Shanxi DMD Corporation	0.12
Shanxi Industry Technology Trading Co., Ltd.	0.12
Shanxi Sincere Industrial Co., Ltd.	0.12
Tancarb Activated Carbon Co., Ltd.	0.12

²⁶ In the second administrative review, Commerce determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208, 70211 (November 17, 2010); *see also AR7 Final Results*, 80 FR at 61174 n.21.

Tianjin Maijin Industries Co., Ltd.	0.12
-------------------------------------	------

In the event that the CIT's ruling is not appealed or, if appealed, is upheld by a final and conclusive court decision, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by the companies identified above using the assessment rates calculated by Commerce in the remand redeterminations, as listed above.

Cash Deposit Requirements

Because there have been subsequent administrative reviews for the companies identified above, the cash deposit rates will remain the rates established in the most recently-completed *AR11 Final Results*, which is \$0.89/kg for Jacobi, \$1.02/kg for CA Tianjin, and \$0.89/kg for Beijing Pacific, Yunguang, Jilin Bright, Cherishmet, Huahui, Ningxia Mineral, Shanxi DMD, Shanxi Technology, Sincere, Tancarb, and Maijin.²⁷

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 20, 2019.

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²⁷ See *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 68881 (December 17, 2019) (*AR11 Final Results*).

